



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/01/06	Bill No:	AB 2621
Tax:	Sales and Use	Author:	Strickland
Related Bills:			

BILL SUMMARY

This bill would exclude from the sales and use tax any federal and state excise taxes included in the selling price of gasoline, diesel fuel, and aircraft jet fuel.

ANALYSIS

Current Law

Existing law imposes a sales or use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted by statute. Existing law expressly includes within the definition of "gross receipts" and "sales price" the amount of any tax imposed by the United States upon producers and importers and the amount of tax imposed by the state under the Motor Vehicle Fuel Tax Law. The law expressly excludes from the definition of "gross receipts" and "sales price" the amount of any state tax imposed upon diesel fuel pursuant to Part 31 (commencing with section 60001) of the Revenue and Taxation Code. The state Sales and Use Tax Law also exempts the sale of motor vehicle fuel used in propelling aircraft, except aircraft jet fuel, that is subject to the tax under the Motor Vehicle Fuel Tax Law.

In general, current federal law (section 4081 of the Internal Revenue Code(IRC)) imposes an excise tax of \$0.184 per gallon on producers for the removal of gasoline from a terminal or refinery, or upon importers for the entry of gasoline into the United States. This section also imposes an excise tax on clear diesel fuel or kerosene at a rate of \$0.244 per gallon, and an excise tax of \$0.194 per gallon on aviation gasoline. The federal excise tax rate on jet fuel (commonly known as aviation grade kerosene or Jet A) intended for noncommercial use is \$0.219, except under specified circumstances.

Under the Motor Vehicle Fuel Tax Law (Part 2, Division 2 of the Revenue and Taxation Code, commencing with section 7301), the state imposes an excise tax of \$0.18 per gallon of gasoline that is subject to the tax in sections 7362, 7363, and 7364. A state excise tax of \$0.02 is imposed on the aircraft jet fuel dealer for each gallon of aircraft jet fuel sold to an aircraft jet fuel user, or used by the dealer as an aircraft jet fuel user.

Therefore, under the existing Sales and Use Tax Law, the computation of sales tax on the sale of gasoline includes the \$0.184 cents per gallon imposed at the federal level and the \$0.18 per gallon imposed by the State.

REVISED REVENUE ESTIMATE

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With respect to sales of diesel fuel and aircraft jet fuel, the computation of sales and use tax includes the federal excise tax of \$0.244 per gallon on diesel fuel and the state excise tax of \$0.02 per gallon for jet fuel and the federal excise tax of \$0.219 per gallon for jet fuel.

Proposed Law

This bill would amend sections 6011 and 6012 to exclude from the measure of the sales and use tax the amount of any tax imposed under Part 2 (commencing with section 7301) and the amount of any tax imposed under section 4081 of the Internal Revenue Code.

In effect the bill would exclude from the measure of sales and use tax the \$0.184 per gallon imposed on gasoline by the United States upon producers and importers, the \$0.18 per gallon tax on gasoline and the \$0.02 per gallon tax on aircraft jet fuel imposed under the Motor Vehicle Fuel Tax Law, as well as the \$0.244 per gallon of federal excise tax imposed on diesel fuel.

Background

The provisions in current law which include the federal and state excise tax in the selling price of gasoline within the computation of sales tax were added by Senate Bill 325 (Ch. 1400, Stats. 1971), which also, for first time since enactment of the Sales and Use Tax Law in 1933, imposed the sales and use tax on sales of gasoline.

COMMENTS

- 1. Sponsor and Purpose.** According to Assembly Member Strickland's office, who is also the sponsor of the bill, this measure is intended to change the current law which sets up a system of double taxation by imposing the sales tax on another tax.
- 2. The excise tax and the sales tax are not eliminated.** The state excise tax is imposed and collected in the same manner. The sales tax rate is unchanged, but the bill does eliminate the imposition of the sales tax upon federal and state excise taxes. The result is that the "base" upon which sales tax is applied would be reduced by \$0.364 per gallon for gasoline, \$0.244 for diesel fuel, and \$0.02 for aircraft jet fuel.
- 3. Certain items need to be addressed.** The Board would need to notify affected retailers of the changes and would require a delayed operative date. Additionally, current law requires the supplier to collect the prepayment of retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. Excluding from the sales and use tax any federal and state excise taxes included in the selling price of gasoline, diesel fuel, and aircraft jet fuel could result in numerous overpayments made by the retailers due to the prepaid amounts exceeding the total sales tax liability. The Board sets the rate by November 1 of the year prior to the effective date of the new rate and notifies affected sellers by January 1. The new rate takes effect April 1. Section 6480.1 provides that if the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the Board may

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re-adjust the rate. It is recommended that this section be amended to allow the Board to re-adjust the rate due to passage of an exemption or exclusion in addition to the current authority to adjust the rate due to changes in the price of fuel. If this bill passes, implementation would be less complicated if the operative date was delayed until April 1, 2007, due to the change in the prepayment rate at that time.

COST ESTIMATE

Some costs would be incurred in notifying affected retailers, answering inquiries, and revising returns. A detailed estimate of the workload is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Currently both the federal and state excise taxes on gasoline are subject to the sales and use tax. Only the federal excise tax on diesel is subject to the sales and use tax. The federal and state excise tax on aircraft jet fuel is also subject to the sales and use tax.

Consumption of gasoline in California is estimated to be 16 billion gallons annually. Diesel consumption amounts to an estimated 3 billion gallons annually. Commercial jet fuel consumption amounts to an estimated 2.4 billion gallons annually. Non-commercial jet fuel consumption amounts to an estimated 150 million gallons annually.

The current excise tax rates and estimated annual excise tax revenues are as follows:

	<u>Gasoline</u>	<u>Diesel</u>	<u>Jet Fuel</u>	
			<u>Commercial</u>	<u>Non- Commercial</u>
Federal Excise Tax Rate	\$0.184	\$0.244	\$0.044	\$0.219
Estimated Annual Gallonage	16 billion	3 billion	2.4 billion	.15 billion
Estimated Annual Revenue	\$2.9 billion	\$0.7 billion	\$0.106 billion	\$0.033 billion
State Excise Tax Rate	\$0.18			\$0.02
Estimated Annual Revenue	\$2.9 billion			\$0.003 billion
Total Excise Tax Revenue	\$5.8 billion	\$0.7 billion	\$0.106 billion	\$0.036 billion

Total amount of gasoline, diesel, and jet fuel revenues that would be affected by this bill is \$6.6 billion.

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Revenue Summary

The revenue loss from exempting the \$6.6 billion from the sales and use tax would be as follows:

	<u>Revenue Effect</u>
State loss (5%)	\$330 million
Fiscal Recovery Fund (0.25%)	16 million
Local loss (2.00%)	132 million
District loss (0.68%)	45 million
Total	\$523 million

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